

ESTTA Tracking number: **ESTTA270776**Filing date: **03/09/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	MASI AGRICOLA S.P.A.		
Entity	JOINT STOCK COMPANY	Citizenship	ITALY
Address	VIA MONTELEONE, FRAZ GARGAGNAGO, 37020 SANT' AMBROGIO DI VALPOLICELLA, VA 00000 ITALY		

Attorney information	JOHN P. MURTAUGH PEARNE & GORDON LLP 1801 EAST 9TH STREET, SUITE 1200 CLEVELAND, OH 44114-3108 UNITED STATES tmdocket@pearne.com, lpittman@pearne.com Phone:216-579-1700
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Applicant Information

Application No	77531502	Publication date	02/17/2009
Opposition Filing Date	03/09/2009	Opposition Period Ends	03/19/2009
Applicant	Alapay Cellars, Inc. 415 1st Street Avila Beach, CA 93424 UNITED STATES		

Goods/Services Affected by Opposition

Class 033. First Use: 2007/01/31 First Use In Commerce: 2007/01/31 All goods and services in the class are opposed, namely: Wines
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	1020203	Application Date	06/29/1973
Registration Date	09/09/1975	Foreign Priority Date	NONE
Word Mark	MASI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U047 (International Class 033). First use: First Use: 1967/00/00 First Use		

	In Commerce: 1972/10/00 WINES
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Attachments	NoticeOpposition.pdf (3 pages)(82800 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JOHNPMURTAUGH/
Name	JOHN P. MURTAUGH
Date	03/09/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

MASI AGRICOLA S.P.A.,)	Mark Being Opposed: MASIX
Opposer,)	U.S. App. No. 77/531,502
)	
v.)	Opposition No. _____
)	
ALAPAY CELLARS, INC.)	
Applicant.)	

NOTICE OF OPPOSITION

1. MASI AGRICOLA S.P.A., an S.p.A. of Italy, having an address at Via Monteleone, Fraz Gargagnago, 37020 Sant' Ambrogio di Valpolicella (Verona), Italy ("Opposer"), believes that it will be damaged by registration of the mark shown in U.S. App. No. 77531502 for the mark MASIX, and hereby opposes the same. The grounds for opposition are as follows.

2. U.S. App. No. 77531502 was filed by Applicant ALAPAY CELLARS, INC. on July 25, 2008 for the mark MASIX on an actual use basis claiming a date of first use anywhere of January 31, 2007 and a date of first use in U.S. commerce of January 31, 2007. The mark was published for opposition for wines, in Class 33. Accordingly, the earliest date of claimed rights is January 31, 2007.

3. Opposer is the owner of U.S. Reg. No. 1020203 filed June 29, 1973 and registered on September 9, 1975 for the mark MASI for wines, in Class 33, claiming a date of first use in U.S. commerce of October 1972. Opposer filed Section 8 and 15 Affidavits which were accepted in 1982. The registration was subsequently renewed in 1995 and 2005. Accordingly, Opposer's registration is now in force and incontestable. Opposer has also used its mark in U.S. commerce on a regular and continuous basis since its first use and accordingly has common law rights corresponding to its registration rights.

4. As can be seen from the above, Opposer has priority over Applicant, since Opposer's rights go back to 1972-1973, while Applicant's rights go back only to 2007.

5. Applicant's goods and Opposer's goods are identical, being wines.

6. The marks, MASI and MASIX, are confusingly similar; they are similar in appearance, sound, meaning and commercial impression. Furthermore, the initial four letters of each mark are the same and it is established law that consumers are more inclined to focus on and remember the initial portion of a trademark.

7. In view of the identical goods and the similarity of the marks, Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, and/or to cause mistake, and/or to deceive.

8. Registration of Applicant's mark will result in damage to Opposer.

Wherefore, Opposer prays that Application No. 77531502 be refused, that no registration be issued thereon to Applicant, and that this Opposition be sustained in favor of Opposer.

If any further fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. BUG9-O1118.

Respectfully submitted,
MASI AGRICOLA S.P.A.

By John P. Murtaugh
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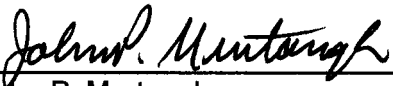
Date March 9, 2009

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION was served upon the Attorney of Record for Applicant by mailing a copy thereof by U.S. first class mail, postage prepaid, addressed to:

Matthew W. Baab
McElroy, Sullivan & Miller, LLP
1201 Spyglass Drive, Suite 200
Austin TX 78746-6941

on this date: March 9, 2009



John P. Murtaugh
Attorney for Opposer